

EXHIBIT C

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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF GUAM

NANYA TECHNOLOGY CORP. and
NANYA TECHNOLOGY CORP. U.S.A

Plaintiffs,

-v-

FUJITSU LIMITED, FUJITSU
MICROELECTRONICS AMERICA, INC.,

Defendants.

CIVIL CASE NO. 06-CV-00025

**DECLARATION OF
LAWRENCE T. KASS**

I, Lawrence T. Kass declare as follows:

1. I make this declaration to the best of my knowledge and belief.

2. I am an associate with Milbank, Tweed, Hadley & McCloy LLP, counsel for
Defendants in Civil Case No. 06-CV-00025.

3. I have reviewed the flight times and schedules for non-stop flights from Taipei,
Taiwan to San Francisco, California in a typical week and the attached Exhibit A is an accurate
description sorted by travel time of the flight times and schedules for this route.

4. I have reviewed the flight times and schedules for non-stop and one-stop flights
from Taipei, Taiwan to Agana, Guam in a typical week and the attached Exhibit B is an accurate
description sorted by travel time of the non-stop and various representative one-stop flight times
and schedules for this route.

1 5. Attached as Exhibit C is a true and correct copy of Fujitsu Limited's and Fujitsu
2 Microelectronics America, Inc.'s Fed. R. Civ. P. 26(a)(1) Initial Disclosure, N.D. Cal. 06-cv-
3 06613 as served on January 26, 2007.

4 6. Attached as Exhibit D is a true and correct copy of Nanya Technology Corp.'s and
5 Nanya Technology Corp. U.S.A.'s Initial Disclosures Pursuant to Rule 26(a), N.D. Cal. 06-cv-
6 06613 as served on January 26, 2007.

7 I declare under penalty of perjury under the laws of the United States that the
8 foregoing is true and correct.

9
10 Executed in New York, New York, this 29th Day of March, 2007.

11
12 By: 

13 Lawrence T. Kass

Exhibit A**Non-stop flights between Taipei and San Francisco**

Airline and Flight Number	Travel Time	Departure Time	Arrival Time	Availability
China Airlines #4	10 h. 45 m.	11:25 p.m.	6:10 p.m.	Daily
Delta #8940	10 h. 45 m.	11:25 p.m.	6:10 p.m.	Daily
EVA #18	10 h. 50 m.	7:50 p.m.	2:40 p.m.	Daily
Continental #9614	10 h. 50 m.	7:50 p.m.	2:40 p.m.	Daily
EVA #28	10 h. 50 m.	11:30 p.m.	6:20 p.m.	M, T, Th., F. Sa.
Continental #9622	10 h. 50 m.	11:30 p.m.	6:20 p.m.	M, T, Th., F. Sa.

Exhibit B**Non-stop flight between Taipei and Agana, Guam**

Airline and Flight Number	Travel Time	Departure Time	Arrival Time	Availability
China Airlines #26	3 h. 35 m.	12:05 a.m.	5:40 a.m.	T, W, Sa., Su.

Various representative one-stop flights between Taipei and Agana, Guam

Airline and Flight Number	Travel Time	Departure Time	Arrival Time	Availability
China Airlines #631/ Continental #894 via Manila	7 h. 20 m.	7:35 a.m.	4:55 p.m.	T and Su. Only
Philippine Airlines #899/ #110 via Manila	7 h. 25 m.	6:35 p.m.	4:00 a.m.	Su. Only
Japan Asia #206 / Continental # 964 via Tokyo	8 h. 15 m.	3:00 p.m.	1:15 a.m.	M, T, Th., F, Su.
EVA #160 / Korean Air #805 via Seoul	8 h. 35 m.	2:45 p.m.	1:20 a.m.	T, W, Th.
China Airlines #18 / Northwest #82 via Tokyo	8 h. 50 m.	2:20 p.m.	1:10 a.m.	W and Sa. only
Japan Asia #204 / Continental #964 via Tokyo	9 h. 15 m.	2:00 p.m.	1:15 a.m.	M, T, Th., F, Su.

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6 MILBANK, TWEED, HADLEY & MCCLOY LLP
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12 **Attorneys for Plaintiffs,**
13 **FUJITSU LIMITED and**
FUJITSU MICROELECTRONICS
14 **AMERICA, INC.**

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **OAKLAND DIVISION**

18 FUJITSU LIMITED and FUJITSU
MICROELECTRONICS AMERICA, INC.

19 Plaintiffs,

20 vs.

21 NANYA TECHNOLOGY CORP. and NANYA
22 TECHNOLOGY CORP. U.S.A.

23 Defendants.
24
25

CASE NO. 4:06-cv-06613 (CW)

PLAINTIFFS' FED. R. CIV. P. 26(a)(1)
INITIAL DISCLOSURE

1 Plaintiffs Fujitsu Limited ("Fujitsu") and Fujitsu Microelectronics America, Inc.
2 ("FMA") (collectively, "Plaintiffs") make the following disclosures pursuant to Federal Rule of
3 Civil Procedure 26(a)(1):

4 **A. The identity of all persons known or believed to have substantial**
5 **discoverable information about the claims or defenses, together with a summary of that**
6 **information:**

6 **FMA**

7 **1. Michael Moore**

8 Mr. Moore's address is Fujitsu Microelectronics America, Inc., 1250 E. Arques
9 Avenue, M/S 333, Sunnyvale, California 94088-3470. Mr. Moore is Vice President and General
10 Counsel of FMA. Mr. Moore has general knowledge about the business in which FMA is
11 engaged, including its operations, offices, affiliates, employees, and sales force. See also Mr.
12 Moore's declaration in this case (Dkt. No. 53) and his declaration in Nanya Technology Corp., et
13 al. v. Fujitsu Limited et al., Guam case no. 1:06-cv-00025 (Dkt. No. 78). Mr. Moore may be
14 contacted through Milbank, Tweed, Hadley & McCloy LLP, as counsel for Plaintiffs.

15 **2. Sandra Blanckensee**

16 Ms. Blanckensee's address is Fujitsu Microelectronics America, Inc., 1250 E.
17 Arques Avenue, M/S 333, Sunnyvale, California 94088-3470. Ms. Blanckensee is FMA's
18 Director of Operations and has knowledge about FMA's operations, sales figures and product
19 distribution. Ms. Blanckensee may be contacted through Milbank, Tweed, Hadley & McCloy
20 LLP, as counsel for Plaintiffs.

1 **3. Once Defendants identify particular accused products, FMA expects it will be**
2 **able to identify additional relevant witnesses located in California.**

3 **Nanya USA**

4 **4. Brian Donahue**

5 On information and belief, Mr. Donahue's address is Nanya Technology Corp.
6 U.S.A., 5104 Old Ironsides Dr., Suite 113, Santa Clara, California 95054, is Sales Director of
7 Nanya USA, and has knowledge about Nanya USA's sales figures and product distribution.

8 **5. David Dwyer**

9 On information and belief, Mr. Dwyer's address is Nanya Technology Corp.
10 U.S.A., 5104 Old Ironsides Dr., Suite 113, Santa Clara, California 95054, is Sales Director of
11 Nanya USA, and has knowledge about Nanya USA's sales figures and product distribution.

12 **Fujitsu Limited**

13 **6. Shigeru Kitano**

14 Mr. Kitano's address is Fujitsu Limited, Shiodome City Center, 1-5-2 Higashi-
15 Shimbashi Minato-ku, Tokyo 105-7123, Japan. Mr. Kitano is Deputy General Manager in the
16 Industry Relations Division of the Law and Intellectual Property Unit of Fujitsu Limited. Mr.
17 Kitano has general knowledge about the business in which Fujitsu Limited is engaged, including
18 its licensing activity, operations, offices, affiliates, employees, and sales force. See also Mr.
19 Kitano's declaration in this case (Dkt. No. 54) and his declarations in Nanya Technology Corp.,
20 et al. v. Fujitsu Limited et al., Guam case no. 1:06-cv-00025 (Dkt. Nos. 51 and 94). Mr. Kitano
21 may be contacted through Milbank, Tweed, Hadley & McCloy LLP, as counsel for Plaintiffs.

22 **U.S. Patent No. 4,801,989**

23 **7. Mr. Taiji Ema**

24 Mr. Ema's address is Fujitsu Limited, Shiodome City Center, 1-5-2 Higashi-
25 Shimbashi Minato-ku, Tokyo 105-7123, Japan. Mr. Ema is knowledgeable about the technology

1 relating to U.S. Patent No. 4,801,989 ("the '989 patent"). Mr. Ema may be contacted through
2 Milbank, Tweed, Hadley & McCloy LLP, as counsel for Plaintiffs.

3 ***U.S. Patent No. 6,104,486***

4 **8. Hiroshi Arimoto**

5 Mr. Arimoto's address is Fujitsu Limited, Shiodome City Center, 1-5-2 Higashi-
6 Shimbashi Minato-ku, Tokyo 105-7123, Japan. Mr. Arimoto is a named inventor of U.S. Patent
7 No. 6,104,486 ("the '486 patent"), and has knowledge of the '486 patent, its conception,
8 reduction to practice, and its prosecution history. Mr. Arimoto may be contacted through
9 Milbank, Tweed, Hadley & McCloy LLP, as counsel for Plaintiffs.

10 ***U.S. Patent No. 6,292,428***

11 **9. Hiroyoshi Tomita**

12 Mr. Tomita's address is Fujitsu Limited, Shiodome City Center, 1-5-2 Higashi-
13 Shimbashi Minato-ku, Tokyo 105-7123, Japan. Mr. Tomita is a named inventor of U.S. Patent
14 No. 6,292,428 ("the '428 patent"), and has knowledge of the '428 patent, its conception,
15 reduction to practice, and its prosecution history. Mr. Tomita may be contacted through
16 Milbank, Tweed, Hadley & McCloy LLP, as counsel for Plaintiffs.

17 **10. Tatsuya Kanda**

18 Mr. Kanda's address is Fujitsu Limited, Shiodome City Center, 1-5-2 Higashi-
19 Shimbashi Minato-ku, Tokyo 105-7123, Japan. Mr. Kanda is a named inventor of the '428
20 patent, and has knowledge of the '428 patent, its conception, reduction to practice, and its
21 prosecution history. Mr. Kanda may be contacted through Milbank, Tweed, Hadley & McCloy
22 LLP, as counsel for Plaintiffs.

1 *U.S. Patent No. 6,320,819*

2 **11. Hiroyoshi Tomita**

3 Mr. Tomita's address is Fujitsu Limited, Shiodome City Center, 1-5-2 Higashi-
4 Shimbashi Minato-ku, Tokyo 105-7123, Japan. Mr. Tomita is a named inventor of U.S. Patent
5 No. 6,320,819 ("the '819 patent"), and has knowledge of the '819 patent, its conception,
6 reduction to practice, and its prosecution history. Mr. Tomita may be contacted through
7 Milbank, Tweed, Hadley & McCloy LLP, as counsel for Plaintiffs.

8 **12. Tatsuya Kanda**

9 Mr. Kanda's address is Fujitsu Limited, Shiodome City Center, 1-5-2 Higashi-
10 Shimbashi Minato-ku, Tokyo 105-7123, Japan. Mr. Kanda is a named inventor of the '819
11 patent, and has knowledge of the '819 patent, its conception, reduction to practice, and its
12 prosecution history. Mr. Kanda may be contacted through Milbank, Tweed, Hadley & McCloy
13 LLP, as counsel for Plaintiffs.

14 **Nanya**

15 *U.S. Patent No. 6,225,187*

16 **13. Tse Yao Huang**

17 Based on Nanya's initial disclosures in Guam, Plaintiffs understand that Mr.
18 Huang's address is Nanya Technology Corporation, Hwa Ya Technology Park, 669, Fu
19 Hsing3rd. Kueishan, Taoyuan, Taiwan, is a named inventor of U.S. Patent No. 6,225,187 ("the
20 '187 patent"), and has knowledge of the '187 patent, its conception, reduction to practice, and its
21 prosecution history.

22 **14. Yun Sen Lai**

23 Based on Nanya's initial disclosures in Guam, Plaintiffs understand that Mr. Lai's
24 address is Nanya Technology Corporation, Hwa Ya Technology Park, 669, Fu Hsing3rd,
25

1 Kueishan, Taoyuan, Taiwan, is a named inventor of the '187 patent, and has knowledge of the
2 '187 patent, its conception, reduction to practice, and its prosecution history.

3 *U.S. Patent No. 6,426,271*

4 **15. Yi-Nan Chen**

5 Based on Nanya's initial disclosures in Guam, Plaintiffs understand that Mr.
6 Chen's address is Nanya Technology Corporation, Hwa Ya Technology Park, 669, Fu Hsing3rd,
7 Kueishan, Taoyuan, Taiwan, is a named inventor of U.S. Patent No. 6,426,271 ("the '271
8 patent"), and has knowledge of the '271 patent, its conception, reduction to practice, and its
9 prosecution history.

10 **16. Hsien-Wen Liu**

11 Based on Nanya's initial disclosures in Guam, Plaintiffs understand that Mr. Liu's
12 address is Nanya Technology Corporation, Hwa Ya Technology Park, 669, Fu Hsing3rd,
13 Kueishan, Taoyuan, Taiwan, is a named inventor of the '271 patent, and has knowledge of the
14 '271 patent, its conception, reduction to practice, and its prosecution history.

15 *U.S. Patent No. 6,790,765*

16 **17. Tse-Yao Huang**

17 Based on Nanya's initial disclosures in Guam, Plaintiffs understand that Mr.
18 Huang's address is Nanya Technology Corporation, Hwa Ya Technology Park, 669, Fu Hsing
19 3rd. Kueishan, Taoyuan, Taiwan, is a named inventor of U.S. Patent No. 6,790,765 ("the '765
20 patent"), and has knowledge of the '765 patent, its conception, reduction to practice, and its
21 prosecution history.

22 **18. Yi-Nan Chen**

23 Based on Nanya's initial disclosures in Guam, Plaintiffs understand that Mr.
24 Chen's address is Nanya Technology Corporation, Hwa Ya Technology Park, 669, Fu Hsing3rd,
25

1 Kueishan, Taoyuan, Taiwan, is a named inventor of the '765 patent, and has knowledge of the
2 '765 patent, its conception, reduction to practice, and its prosecution history.

3 **19. Hui-Min Mao**

4 Based on Nanya's initial disclosures in Guam, Plaintiffs understand that Mr.
5 Mao's address is Nanya Technology Corporation, Hwa Ya Technology Park, 669, Fu Hsing3rd,
6 Kueishan, Taoyuan, Taiwan, is a named inventor of the '765 patent, and has knowledge of the
7 '765 patent, its conception, reduction to practice, and its prosecution history.

8 **B. A description, including the location, of all documents that are reasonably**
9 **likely to bear substantially on the claims or defenses:**

10 All or most of FMA's documents are located at its headquarters and principal
11 place of business at 1250 E. Arques Avenue, M/S 333, Sunnyvale, California 94088-3470.

12 All or most of Nanya USA's documents are believed to be located at its
13 headquarters and principal place of business at 5104 Old Ironsides Dr., Suite 113, Santa Clara,
14 CA 95054.

15 Documents related to Fujitsu's patents, the '989, '486, '428, and '819 patents,
16 which bear on Plaintiffs' claims, are located at Fujitsu's offices at 4-1-1, Kamikodanaka
17 Nakahara-ku, Kawasaki-shi, Kanagawa, Japan 211-8588. Certain additional documents related
18 to these patents are believed to be located at the offices of Fujitsu's outside patent firms. The
19 names of those firms and their addresses are as follows: Armstrong, Kratz, Quintos, Hanson &
20 Brooks, LLP, 1725 K St., N.W. Suite 1000, Washington, DC 20006; Arent Fox PLLC, 1050
21 Connecticut Ave. N.W. Suite 400, Washington, DC 20036-5339; and Itoh International patent
22 office, 32th floor, Ebisu-Garden-Place, 20-3, Ebisu-4chome, Shibuya-ku, Tokyo, 150-6032,
23 Japan. Fujitsu has some additional documents at the Fujitsu Akiruno Technology Center, 50
24 Fuchigami, Akiruno-city, Tokyo, Japan.

25 Based on Nanya's initial disclosures in Guam, Plaintiffs understand that all or
most documents related to Nanya's patents, the '187, '271 and '765 patents, which bear on its

1 claims, are located at Plaintiffs headquarters, Hwa Ya Technology Park, 669, Fu Hsing3rd,
2 Kueishan, Taoyuan, Taiwan. Certain additional documents related to these patents are believed
3 to be located at the offices of Nanya's outside patent firms. The names of those firms, along
4 with the addresses provided in the patent file histories, are as follows: Shaw Pittman, 2300 N
5 Street, N.W. Washington, DC 20037; and Birch, Stewart, Kolasch & Birch, LLP Post Office Box
6 747 Falls Church, Virginia 22040-0747.

7 Additional relevant documents that bear on Plaintiffs' claims will be obtained
8 from Defendants during the discovery process.

9 **C. A computation of any damages claimed:**

10 Under 35 U.S.C. § 284, Plaintiffs seek damages adequate to compensate for
11 Defendants' infringement of the '989, '486, '428, and '819 patents, but in no event less than a
12 reasonable royalty for Defendants' use of the inventions, together with interest as fixed by the
13 Court. Plaintiffs also seek under § 284 an increase of damages up to three times the amount
14 found or assessed.

15 The full extent of Plaintiffs' damages will be further disclosed and supplemented
16 upon receipt of the relevant information from Defendants and in accordance with Federal Rules
17 of Civil Procedure 26(a)(2) and 26(b)(4) and any scheduling orders issued by the Court.

18 **D. The substance of any insurance agreement that may cover any resulting
19 judgment:**

20 Plaintiffs are not aware of any insurance agreements that may cover any resulting
21 judgment.
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1
2
3 Dated: 1/26/07

By: 

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17 Attorneys for Plaintiffs
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19 FUJITSU MICROELECTRONICS AMERICA, INC.
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Attorneys for Defendants
Nanya Technology Corp. and
Nanya Technology Corp. U.S.A.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

FUJITSU LIMITED and FUJITSU
MICROELECTRONICS AMERICA, INC.

Plaintiffs,

vs.

NANYA TECHNOLOGY CORP. and NANYA
TECHNOLOGY CORP. U.S.A.

Defendants.

Action No. C06-06613 CW

**DEFENDANTS' INITIAL
DISCLOSURES PURSUANT TO
RULE 26(a)**

Pursuant to Rule 26(a) of the Federal Rules of Civil Procedure, and subject and without prejudice to its Motion to Dismiss for Insufficient Service of Process or Alternatively to Quash Service of Process [Doc. 14] and its Motion to Dismiss, Transfer, or Stay the Case [Doc. 18], Defendants Nanya

FLIESLER
MEYER LLP

Technology Corp. and Nanya Technology Corp. U.S.A. ("Defendants") make the following disclosures:

(A) **The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information:**

1. Masao Taguchi

Masao Taguchi is the named inventor of U.S. Patent No. 4,801,989 ("the '989 patent").

2. Hiroshi Arimoto

Hiroshi Arimoto is the named inventor of U.S. Patent No. 6,104,486 ("the '486 patent").

3. Hiroshi Tomita

Hiroshi Tomita is a named inventor of U.S. Patent No. 6,292,428 B1 ("the '428 patent") and U.S. Patent No. 6,320,819 B2 ("the '819 patent").

4. Tatsuya Kanda

Tatsuya Kanda is a named inventor of the '428 patent and the '819 patent.

5. Michael M. Moore

Mr. Moore has signed a declaration in this action on behalf of Fujitsu.

6. Nien-Huai Hsu

Nien-Huai Hsu has signed a declaration in this action on behalf of Fujitsu.

7. Shigeru Kitano

Shigeru Kitano has signed a declaration in this action on behalf of Fujitsu.

Fujitsu Limited
1-1, Kamikodanaka 4-chome, Nakahara-ku, Kawasaki
211-8588, Japan

8. Victor S.C. Lee

Victor S.C. Lee has signed a declaration in this action on behalf of Fujitsu.

9. Chris L. Holm

Mr. Holm has signed a declaration in this action on behalf of Fujitsu.

10. Katsuya Irie

Katsuya Irie has knowledge of the patents and licensing.

Fujitsu Limited

1-1, Kamikodanaka 4-chome, Nakahara-ku, Kawasaki
211-8588, Japan

11. Yuichi Sakoda

Yuichi Sakoda has knowledge of the patents and licensing.

Fujitsu Limited

1-1, Kamikodanaka 4-chome, Nakahara-ku, Kawasaki
211-8588, Japan

12. Noriaki Sato

Noriaki Sato has knowledge of the patents and licensing.

Fujitsu Limited

1-1, Kamikodanaka 4-chome, Nakahara-ku, Kawasaki
211-8588, Japan

13. Takao Miura

Takao Miura has knowledge of the patents and licensing.

Fujitsu Limited

1-1, Kamikodanaka 4-chome, Nakahara-ku, Kawasaki
211-8588, Japan

14. Yasuharu Yatsu

Yasuharu Yatsu is a named inventor of U.S. Patent No. 6,225,765 ("the '765 Patent), and may be contacted through Shore Chan Bragalone LLP, as counsel for Defendants.

15. Tomoki Nakamura

Tomoki Nakamura is a named inventor of the '765 Patent, and may be contacted through Shore

1 Chan Bragalone LLP, as counsel for Defendants.

2 **16. Shoji Shirai**

3 Shoji Shirai is a named inventor of the '765 Patent, and may be contacted through Shore Chan
4 Bragalone LLP, as counsel for Defendants.

5
6 **17. Tse Yao Huang**

7 Tse Yao Huang is a named inventor of U.S. Patent No. 6,225,187 ("the '187 patent"), and may be
8 contacted through Shore Chan Bragalone LLP, as counsel for Defendants.

9
10 **18. Yun Sen Lai**

11 Yun Sen Lai is a named inventor of the '187 Patent, and may be contacted through Shore Chan
12 Bragalone LLP, as counsel for Defendants.

13 **19. Yi-Nan Chen**

14 Yi-Nan Chen is a named inventor of U.S. Patent No. 6,436,271 ("the '271 Patent), and may be
15 contacted through Shore Chan Bragalone LLP, as counsel for Defendants.

16
17 **20. Hsien-Wen Liu**

18 Hsien-Wen Liu is a named inventor of the '271 Patent and may be contacted through Shore Chan
19 Bragalone LLP, as counsel for Defendants.

20
21 **(B) A copy of, or a description by category and location of, all documents, data compilations,
22 and tangible things that are in the possession, custody, or control of the party and that the
disclosing party may use to support its claims or defenses, unless solely for impeachment:**

23 Defendants identify the following documents, data compilations, tangible things, by category and
24 location, that Defendants may use to support its claims and defenses, except documents to be used solely
25 for impeachment:

- 26
27 1. The patents-in-suit and their file histories – Dallas, Texas.
28 2. Documents relating to validity or invalidity of the patents-in-suit – Dallas, Texas.

3. Documents relating to licensing of the patents-in-suit – Dallas, Texas.

(C) A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered:

None at this time.

(D) For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment:

None.

Respectfully Submitted,

Dated: January 26, 2007

By:

FLIESLER MEYER LLP

Martin C. Fliesler (SBN 073768)

Rex Hwang (SBN 221079)

Justas Geringson (SBN 240182)

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Attorneys for Defendants

Nanya Technology Corp. and

Nanya Technology Corp. U.S.A.

CERTIFICATE OF SERVICE

I, Cathy A. Akins, declare:

I am over the age of 18 years, am not a party to this Action, and am employed in the County of San Francisco. My business address is Fliesler Dubb Meyer & Lovejoy, LLP, 650 California Street, 14th Floor, San Francisco, California 94108.

On January 26th, 2007, I caused to be served the following attached documents:

DEFENDANT'S INITIAL DISCLOSURES PURSUANT TO RULE 26(A)

on the following individuals and entities, as addressed below, by the means indicated below:

___ **BY FEDERAL EXPRESS.** I caused above-identified document(s) to be placed in a sealed Federal Express envelope(s) with delivery fees fully prepaid, for delivery to addressee(s) on the next business day.

X **BY FACSIMILE.** I caused the above-identified document(s) to be sent by facsimile transmission to the party(ies) listed below at the facsimile number(s) shown.

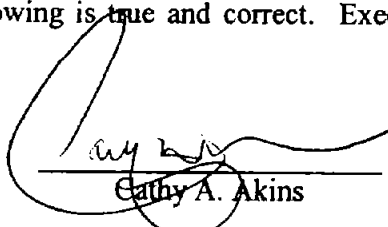
___ **BY HAND DELIVERY.** I directed a messenger/courier to personally deliver said document(s) to the addressees identified below on the same business day.

X **BY U.S. MAIL.** I caused the above-identified document(s) to be deposited for collection at Fliesler Meyer LLP following the regular practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service on this day.

Gregory Lawrence Evans
Chris L. Holm
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Los Angeles, California 90017-5735
Facsimile: 213-629-5063

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Frank A. Bruno
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I declare under penalty of perjury that the following is true and correct. Executed at San Francisco, California on January 26th, 2007.


Cathy A. Akins

FLIESLER
MEYER LLP

EXHIBIT D

FILED
DISTRICT COURT OF GUAM

OCT - 5 1998

MAST L. M. MORAN
CLERK OF COURT

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IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM

GEORGE COPITAS and JOSEPH GARGAS,

Plaintiffs,

vs.

FISHING VESSEL ALEXANDROS,
OFFICIAL NO. 95013, HER ENGINES,
NETS, FURNITURE, etc., In Rem,
Nick Violaris, Sokimona Fishing Pty. Ltd,
In Personam.

Defendants.

Civil Case No. CIV 98-00010³ RS

MEMORANDUM ORDER

This matter comes before the Court on Defendants' Motion to Dismiss for Forum Non Conveniens. The court has considered the submissions by the parties and the law and GRANTS the motion under the following conditions: (1) Defendants submit to the jurisdiction of Papua New Guinea courts; and (2) Defendants issue a letter of guarantee that they will satisfy any Papua New Guinea judgment awarded to Plaintiffs.

I. STATEMENT OF THE CASE

The M/V Alexandros is a fishing vessel registered in Papua New Guinea (PNG), and owned by Defendant Sokimona Fishing Pty, a Papua New Guinea corporation. Defendant Nick Violaris owns Sokimona and is a resident of Australia. Plaintiffs are United States citizens hired out of California to work aboard the M/V Alexandros as engineers. Plaintiffs were employed to repair the vessel, prepare the vessel for fishing, and serve onboard the vessel, and agreed to wages of \$50/day plus expenses to prepare the vessel, and wages of \$30/ton for Plaintiff Copitas and

1 \$15/ton for Plaintiff Gargas once the vessel began fishing voyages. The agreements for
2 employment and wages were not in writing. Plaintiffs traveled to Singapore in May and June of
3 1997 to begin their engagement. Gargas claims he supervised the unloading of a fishing net which
4 was sent to Guam, as well as the shipment of a water purification system to Guam for installation
5 while the vessel was still in port.

6 The Plaintiffs' employment ended on December 5, 1997, when Copitas allegedly assaulted
7 the ship's captain. Gargas voluntarily terminated his employment at the same time. The
8 Defendants assert that Copitas was terminated for cause as a result of the alleged assault.
9 However, Copitas claims he was not terminated, implicitly arguing the vessel's captain could not
10 effect a unilateral termination.

11 Two weeks after the allegedly assault, the vessel left Singapore without the Plaintiffs and
12 sailed to Guam to retrieve the fishing net under repair. The M/V Alexandros left Guam, but
13 returned for further repairs on the net. The net was arrested at this time. The repair of the fishing
14 net is Defendants' only contact with Guam. Plaintiffs seek unpaid ordinary wages and statutory
15 wages for violation of 46 U.S.C. §10601.

16 Defendants seek a dismissal for forum non conveniens, and have agreed the dismissal may
17 be conditional upon 1) Defendants Violaris and Sokimona submitting themselves to the jurisdiction
18 of the PNG court, and 2) the M/V Alexandros being submitted to the in rem jurisdiction of the
19 PNG court.

20 **II. ANALYSIS**

21 The facts here are similar to a case the Court dismissed in July 1998 for forum non
22 conveniens, where the same defendants sought dismissal for forum non conveniens. Gargas v.
23 Violaris, CIV 97-00081, Memorandum Order (D. Guam July 13, 1998). The U.S. citizen
24 plaintiffs in Gargas allege they entered an oral contract to provide consulting, legal and
25 administrative services as part of a joint fishing venture and fishing vessel. Plaintiff Gargas also
26 alleged he was to serve as captain of the M/V Alexandros. Plaintiffs sought jurisdiction on Guam
27 by seizing Defendants' fishing net, which was being repaired on Guam. This was defendants' only
28

1 contact with Guam. Plaintiffs' complaint demanded payment for the approximate value of their
 2 services. The Court dismissed the case, upon condition that plaintiffs re-file in PNG, and
 3 defendants submit themselves to PNG jurisdiction.

4 Defendants rely heavily on the Court's decision in Gargas, arguing the sole distinguishing
 5 factor arises from the Court's in rem jurisdiction over the vessel in the present case. Additionally,
 6 to make the present case factually identical to Gargas, Defendants have offered to concede in rem
 7 jurisdiction of the M/V Alexandros to the courts of PNG.

8 **A. DEFENDANTS HAVE MET THEIR BURDEN FOR DISMISSAL**

9 **1. An Adequate Alternative Forum Exists**

10 The forum non conveniens doctrine is predicated upon the existence of another adequate
 11 and available alternative forum. Perusahaan Umum Listrik Negara Pusat v. M/V Tel Aviv, 711
 12 F.2d 1231, 1238 (9th Cir. 1983). Generally, an alternative forum exists when the defendant is
 13 amenable to process in the other forum. Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947). In
 14 the present case, Plaintiffs offered a declaration indicating PNG is a common law maritime
 15 jurisdiction, and its courts have jurisdiction over any claim by a seaman for wages earned onboard
 16 a ship. Decl. of Brian Denis White, Application for Reconsideration of Order Vacating Arrest and
 17 for Issuance of Warrant of Arrest of Vessel Pursuant to Supp. Admiralty Rule C(3), filed April 1,
 18 1998. Additionally, PNG adopted English Common Law, which gives seaman seeking unpaid
 19 wages a maritime lien upon a vessel, which travels with the vessel and can be enforced in PNG
 20 courts by an in rem action. Id. Thus, PNG is an adequate alternative forum.¹

21 Having found PNG is an adequate alternative forum, the two-prong forum non conveniens
 22 test applies: 1) determining choice of law, 2) weighing private and public interest factors.

23 **2. Under Choice of Law Analysis, Papua New Guinea Law Should be Applied**

24 The Court finds that PNG law controls. The choice of law determination takes eight
 25
 26

27 ¹ At hearing, Defendants stated that there would probably not be a significant difference in the amount
 28 of recovery if the action were heard in PNG, although he was not sure if PNG allowed for punitive damages.

factors into consideration.² Defendants make a compelling argument that PNG law applies, and Plaintiffs concede that analysis of the factors "suggest that the law of PNG should be applied." Plaintiff's Memorandum in Support of Plaintiffs' Opposition to to Defendants' Motion to Dismiss on Ground of Forum Non Conveniens at 7, filed Sept. 8, 1998. The following factors strongly favor the application of PNG law: law of the flag (M/V Alexandros); allegiance of the shipowner (Sokimona) and shipowner's base of operations. Yet the fact that PNG law applies will not given "conclusive or even substantial weight." Piper Aircraft Co. v. Reyno, 454 U.S. 235, 247 (1981).³

3. Weighing Private and Public Interest Factors Favor Dismissal

Private interests include: ease of access to sources of proof; compulsory process to obtain the attendance of hostile witnesses; the cost of transporting friendly witnesses; and other problems that interfere with an expeditious trial. Gulf Oil, 330 U.S. at 508. The distance between Guam and PNG is at most four or five hours by plane, and none of the parties reside in PNG. In fact, Plaintiffs reside in the U.S. mainland and Violaris is an Australian citizen, while the vessel and its captain are seafaring. Thus, most of the key players and information for trial are closer to PNG. The cost and access to witnesses is not considerably more burdensome for either party in having the trial in Guam. Additionally, the record does not indicate the availability of compulsory process necessary to obtain attendance of hostile witnesses; the absence of process weighs against dismissal, and it is Defendants' burden to show such process exists.

Weighing public interest factors especially favor dismissal. Public interest factors include court congestion, the local interest in resolving the controversy, and the preference for having the forum apply a law with which it is familiar. Contact Lumber Co. v. Moges Shipping Co., 918 F.2d

² Relevant considerations for choice of law determinations: 1) place of the wrongful act; 2) law of the flag; 3) allegiance or domicile of the injured party; 4) allegiance of the shipowner; 5) place of contract; 6) inaccessibility of foreign forum; 7) law of the forum. Lauritzen v. Larsen, 345 U.S. 571 (1953) and Hellenic Lines, Ltd. v. Rhoditis, 398 U.S. 306 (1970). Hellenic also added an eighth factor, the shipowner's base of operations.

³ There is an exception when the alternative forum's remedy is so inadequate or unsatisfactory "that it is no remedy at all." Piper, 454 U.S. at 254. The exception does not apply, because PNG recognizes the common law giving seamen seeking unpaid wages a maritime lien upon a vessel, and the lien travels with the vessel and can be enforced in PNG courts by an in rem action. Decl. of Brian Denis White.

1 1446, 1452 (1990). In analyzing court congestion, the Court acknowledges its heavy docket, but
 2 has previously stated that "it is not so congested that it cannot hear [a] case in a timely manner."
 3 Gargas, Memorandum Order, at 4. However, the local interest in resolving the controversy is
 4 minimal, as the vessel's only contact with Guam involved the repair of fishing nets with a Guam
 5 business. Finally, the Court has already determined that PNG law should apply, and having the
 6 action heard in PNG meets the public interest that a forum apply a law with which it is familiar.

7 Thus, the two-part test favors dismissal. However, Plaintiffs have two compelling
 8 arguments in their favor. First, courts have long recognized the view of seamen as "wards of
 9 admiralty" who are entitled to heightened legal protection. Semintilli v. Trinidad Corp., 1998 WL
 10 614654 1, 7 (9th Cir. Cal. 1998). Second, Plaintiffs they "retain the heavy presumption in favor of
 11 their choice of forum. A plaintiff's interest in this choice is itself sufficient to tilt the scale in his
 12 favor." Perusahaan, 711 F.2d at 1240. Yet the Perusahaan court also stated that

13 When a dispute arises, parties should be encouraged to seek judicial resolution in the most
 14 convenient forum, respecting the various public and private interests. If the court is
 15 satisfied that there exists an alternative forum with substantially more contacts to the
 dispute, and that this forum is adequate and available to plaintiff, the court may dismiss on
 forum non conveniens grounds.

16 Id. at 1242. Plaintiffs have not proved Guam is a convenient forum, and Defendants have proved
 17 Guam is inconvenient. To take Plaintiffs' argument to its logical conclusion, the Court would be
 18 able to extend its jurisdiction based upon utterly minimal contacts with Guam, for example, over
 19 airplanes that land on Guam for one hour to refuel. Even in applying the heightened legal
 20 protection due to "wards of admiralty," the Court must find sufficient contacts after analyzing the
 21 relevant factors in order to exercise jurisdiction. United Continental Tuna Corp. v. United States,
 22 550 F.2d 569, 573 (9th Cir. 1977). Despite Plaintiffs' status and the presumption in choosing a
 23 forum, the exercise of jurisdiction here does not further the interest of judicial economy, when an
 24 available and adequate alternative forum exists.

25 III. CONCLUSION

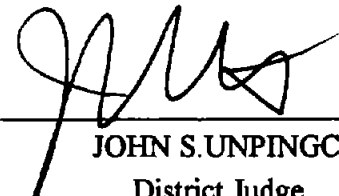
26 Therefore, the Motion to Dismiss for Forum Non Conveniens is granted with the
 27 following conditions: (1) Defendants submit to the jurisdiction of the courts of Papua New
 28

1 Guinea; and (2) Defendants issue a letter of guarantee that they will satisfy any judgment awarded
2 to Plaintiffs.

3 IT IS SO ORDERED.

4 Dated: October 5, 1998

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JOHN S. UNPINGCO
District Judge

EXHIBIT E

SHORECHAN BRAGALONE_{LLP}

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April 13, 2007

VIA EMAIL

Michael Murray, Esq.
Christopher Chalsen, Esq.
Milbank, Tweed, Hadley & McCloy, LLP
1 Chase Manhattan Plaza
New York, NY 10005

Re: *Nanya Technology Corp., et al. v. Fujitsu Limited, et al.*
(No. 06-CV-00025, in the U.S. District Court, District of Guam)

Dear Counsel:

I write to follow up on our conversation yesterday and our letters of March 22, 2007 and April 9, 2007.

Nanya does not believe its jurisdictional discovery requests have been sufficiently satisfied. Nanya served discovery requests on December 14, 2006 and February 9, 2007 and has been waiting for over four months for documents. We continue to be willing to work with you in getting these documents. I hope you are willing to work with us in this regard. As you are aware, the pending May 15, 2007 deadline for Nanya's response to FMA's jurisdictional challenge requires an immediate unqualified response on your part. Therefore, as we discussed, please let us know by 6 p.m. (CST) Friday, April 13, 2007 when you will produce all of the requested documents.

Because you desire further clarification of our discovery requests, let me restate the categories that were set out in our December 14, 2006 and February 9, 2007 discovery requests and our March 22, 2007 and April 9, 2007 letters:

1. All documents identifying any product that incorporates any one or more of the Accused Devices (defined as both the "Accused Devices" and "Similar Devices" detailed in Plaintiffs' Second Set of Jurisdictional Requests for Production to FMA, served on February 9, 2007). These requests are narrowly tailored to discover evidence related to potentially infringing devices that may be available in Guam through the stream of commerce;

SHORECHAN
BRAGALONE_{LLP}

Michael Murray, Esq.
Christopher Chalsen, Esq.
Milbank, Tweed, Hadley & McCloy, LLP
April 13, 2007
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2. All documents identifying the entities involved in the design, supply, manufacture, sales, solicitation, or purchase of the Accused Devices. These categories address whether FMA places its products into the stream of commerce and whether these products are likely to be available in the forum site;
3. Documents regarding communications, sales, marketing, incorporation or integration of the Accused Devices into FMA's customers' or potential customers' products. These requests seek to identify and track the incorporation of the Accused Devices into end-products and the final destination of such end-products;
4. All documents showing design wins for any Accused Device including but not limited to FlexRay, "MOST" or "CAN" controllers or devices. These categories address the design and/or incorporation of the Accused Devices into networking, wireless, automotive, industrial, consumer, and security applications; and
6. Documents identifying all FMA customers from 1999 to 2007.

Also, as we discussed, please let us know by Tuesday, April 17, 2007 when you can make available for deposition a Rule 30(b)(6) corporate representative for FMA on the following topics:

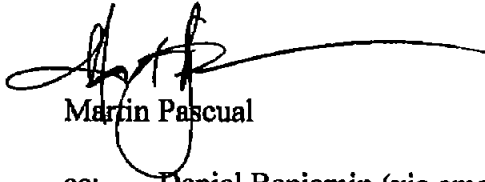
1. All design wins for the Accused Devices from 1999 to 2007;
2. All products that incorporate the Accused Devices from 1999 to 2007;
3. All customers or purchasers of the Accused Devices from 1999 to 2007;
4. The sales cycle for the Accused Devices, which includes how FMA markets the Accused Devices, how FMA works with its customers so that the Accused Devices can be incorporated or integrated into FMA's customers' products;
5. Market data and sales' projections for the Accused Devices; and
6. All qualifications of the Accused Devices.

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April 13, 2007
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We look forward to hearing from you by the end of the day.

Regards,

A handwritten signature in black ink, appearing to read 'Martin Pascual', with a long horizontal flourish extending to the right.

cc: Daniel Benjamin (via email)
Rodney Jacob (via email)
Joseph Razzano (via email)
Judge John Unpingco (via email)